

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

IRIS MORALES,

Plaintiff,

vs.

HARD ROCK HOTEL & CASINO,

Defendant.

Case No. 2:10-cv-01257-GMN-GWF

**FINDINGS AND
RECOMMENDATIONS**

On July 27, 2010, Plaintiff filed her Motion to Proceed *In Forma Pauperis* and Complaint. (#1). The Court granted Plaintiff's *in forma pauperis* application and screened Plaintiff's complaint, which alleges that Defendant discriminated against her based on her race. (#4). The Court found that Plaintiff had failed to state a viable claim for racial discrimination because the complaint does not allege that she was treated differently from other employees on the basis of her race or that the decision to terminate her employment included her race as a factor. (*Id.*) In addition, the Court noted that "in order to pursue a Title VII claim in federal court, one must have filed a charge with the U.S. Equal Employment Opportunity Commission ("EEOC") or the Nevada Equal Rights Commission ("NERC") and received a Notice of Right-to-Sue. (*Id.*) The Court found that there was no indication that Plaintiff filed such a complaint with the EEOC or NERC and Plaintiff did not proffer evidence of a Right-to-Sue letter from the EEOC. (*Id.*)

As a result, the Court dismissed Plaintiff's complaint without prejudice and allowed Plaintiff 30 days to amend her complaint if she believed she could remedy the deficiencies. (*Id.*) Furthermore, the Court notified Plaintiff that failure to amend her complaint by October 25, 2010 might result in this action being dismissed with prejudice. (*Id.*) To date, Plaintiff has failed to file an amended complaint


1 and the time allotted has expired. As a result, the Court will recommend that this action be dismissed
2 with prejudice. Accordingly,

3 **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint (#5) should be **dismissed with**
4 **prejudice** based on Plaintiff's failure to file an amended complaint alleging viable claims within the
5 time allotted by the Court.

6 **NOTICE**

7 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
8 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held
9 that the courts of appeal may determine that an appeal has been waived due to the failure to file
10 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
11 held that (1) failure to file objections within the specified time and (2) failure to properly address and
12 brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual
13 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt*
14 *v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

15 DATED this 18th day of January, 2011.

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18 **GEORGE FOLEY, JR.**
19 **UNITED STATES MAGISTRATE JUDGE**
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